



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 20, 1995

Mr. James D. Brush
General Counsel
Texas Department of Licensing and Regulation
P.O. Box 12157
Austin, Texas 78711

OR95-1107

Dear Mr. Brush:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 36235.

The Texas Department of Licensing and Regulation (the "department") has received a request for "a copy of a letter from Senator Eddie Lucio, Jr. to Jack W. Garison, the Executive Director of the Department, regarding an employee of the Department." You contend that the document is excepted from required public disclosure under sections 552.102, 552.109, and 552.111 of the Government Code. We address your arguments in turn.

We first address your argument under section 552.109, which excepts from disclosure "[p]rivate correspondence or communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy." You argue that "because of the unusual nature of the correspondence," its release could constitute an invasion of privacy. We note, however, that section 552.109 protects only the privacy interests of elected office holders. Open Records Decision No. 473 (1987). It does not protect the privacy interests of their correspondents. Open Records Decision No. 332 (1982). The document submitted for our review does not contain information that would implicate the senator's privacy interests. Therefore, section 552.109 does not except the letter from required public disclosure.

We next address your argument that the letter is excepted from disclosure by section 552.102 of the Government Code. Section 552.102 excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 excepts information

in personnel files only if it meets the test under section 552.101 for common-law invasion of privacy. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under common-law privacy, information may be withheld if

(1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public.

Industrial Found. v. Texas Indus. Accident Bd., 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Although information concerning a public employee may be embarrassing, the public generally has a legitimate interest in knowing about the job performance of public employees. See Open Records Decision Nos. 444 (1986), 405 (1983). We have reviewed the letter and conclude that it does not contain highly intimate or embarrassing facts and there is a legitimate public interest in its contents. Therefore, section 552.102 does not except the letter from required public disclosure.

You next argue that section 552.111 excepts the letter from required public disclosure. Section 552.111 excepts from disclosure an "interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office concluded that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. The requested letter relates to a personnel matter. Accordingly, we conclude that section 552.111 of the Government Code does not except the letter from required public disclosure. You must therefore release the letter in its entirety.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 36235

Enclosures: Submitted document

cc: Mr. Ernesto Gamez, Jr.
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(w/o enclosures)